

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOHN F. SMITH,
Plaintiff,

v.

No. CV-10-1030 CEG/LAM

ROBERT McCORD, and
JEREMY STOREY, police officers
employed by the City of Las Cruces
Police Department, in their Individual
Capacities,

Defendants.

ORDER GRANTING EXTENSION OF TIME

THIS MATTER is before the Court on *Plaintiff's Motion Pursuant to Fed. R. Civ. P. 4 to Extend Time in Which to Effect Service and Response to the Court's Order to Show Cause* ('Motion') (Doc. 9). Plaintiff seeks additional time to properly serve a copy of the summons and complaint upon a Defendant in this action. The Court, having considered Plaintiff's Motion, the relevant law, and otherwise being fully advised in the premises, **FINDS** the motion to be well-taken and will be **GRANTED**.

Plaintiff filed his *Complaint for Deprivation of Civil Rights (42 U.S.C. § 1983) in the Form of Excessive Use of Police Force* on October 30, 2010. (Doc. 1). More than 120 days have elapsed and Plaintiff has not served a copy of the summons and complaint upon Officer Jeremy Storey. The Court then *sua sponte* directed Plaintiff to show cause why his case should not be dismissed for failure to prosecute. (Doc. 7). Plaintiff states that he has been unable to effect service upon the Defendant because he was not certain of Defendant's address and neither the Office of the Las Cruces City Attorney or the Las Cruces Police Department would provide Officer Storey's address or accept service on his

behalf. (Doc. 9 at 2). Plaintiff states that he now has verified Defendant Storey's address and Plaintiff requests a fifteen day extension of time to serve the summons and complaint. (Doc. 9 at 2-4).

Upon a showing of good cause by a plaintiff, a court is required to extend the time for service for an appropriate period. FED. R. CIV. P. 4(M). Even if the plaintiff has not demonstrated good cause for an extension of time, the Court may, in its discretion, provide for an extension of time to effect service. *Espinoza v. United States*, 52 F.3d 838 (10th cir. 1995). The Court finds that Plaintiff's good faith effort to find Officer Storey so as to effect personal service of the summons and complaint constitutes 'good cause' for an extension of time. The Court further notes that allowing for an extension will not prejudice Defendants in any way.

IT IS THEREFORE ORDERED that *Plaintiff's Motion Pursuant to Fed. R. Civ. P. 4 to Extend Time in Which to Effect Service and Response to the Court's Order to Show Cause*, (Doc. 9), be **GRANTED**. Plaintiff shall have fifteen (15) days from the entry of this order to serve the summons and complaint upon Officer Storey.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', with a long horizontal line extending to the right.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE